

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

**TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR**

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION Nos.9965 and 10826 of 2004

WRIT PETITION No. 9965 of 2004

Between:

N. Sridhar Reddy S/o N. Ramanarayanareddy
R/o O.S. Bandakadapally, H/o Yallamanda Village, Yerravaripalem Mandal,
Chittoor District .

..... PETITIONER

AND

- 1 The Collector & District Magistrate, Chittoor
- 2 The Government of A.P. rep by Chief Secretary, Secretariat, Hyderabad
- 3 The Superintendent, Central Prison, Cherlapalli

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus directing the respondents to produce Sri Nandam Reddy Ramanarayana Reddy S/o N. Krishna Reddy now detained in the Central Prison, Cherlapalli, before this Hon'ble Court and he may be order to release forthwith after declaring that his detention is illegal and void.

Counsel for the Petitioner : Mr. C.PRAVEEN KUMAR

Counsel for the Respondents : THE ADVOCATE GENERAL

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WRIT PETITION No.10826 of 2004

Pathipati Saraswathi, W/o. P.Venkatadri Naidu,
R/o. Yallamanda Village, Yarravaripalem Mandal, Chittoor District.

AND

- ## RESPONDENTS

The Court made the following :

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COMMON JUDGMENT: (per C.V. RAMULU,J)

W.P.No.9965 of 2004

This Writ Petition is filed seeking a Writ of Habeas Corpus to direct the respondents to produce the father of the petitioner – Nandam Reddy Ramanarayana Reddy (detenu), who is now detained in Central Prison, Cherlapalli, Ranga Reddy district under the provisions of sub-Section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act,1986 (hereinafter referred to as 'the Act'), before the Court and release him forthwith by declaring detention order dated 8-5-2004 passed by the 1st respondent in his Proceedings ROC.C2/2765/2004 as illegal and void.

The above detention order has been passed against the father of the petitioner on the ground that he is indulging in illicit cutting, storing and transporting the Red Sanders heartwood causing wilful destruction and damage to the public property and depletion of green cover resulting in adverse ecological balance, having ramification on the health and well being of the public. Further, the detenu had confessed the commission of forest offences. He instigated the youth to commit the offence of illicit cutting of Red Sanders and to transport the same by clandestine means by luring them with money; thus, habituated to wilful destruction of the pristine red sanders forest causing potential danger to the public well being, which are prejudicial to the maintenance of public order and in proof of such satisfaction, five incidents were relied upon by the 1st respondent in the impugned order.

In pursuance of the said order, the detenu was arrested and detained in the Central Prison, Charlapalli on 18-5-2004. The said order was approved by the Government in G.O.Rt.No.3445, dated 29-6-2004 and directed to continue the detention for a period of 12 months. The representation made by the detenu was rejected by the Government by an Order dated 29-6-2004. The Advisory Board reviewed the case of the detenu and held that there is sufficient cause for detaining the detenu.

In the writ affidavit, the petitioner states *inter alia* that the grounds of detention

were not furnished in proper form and the same was not a complete document and the offences alleged against the detenu do not attract the definition of 'theft' punishable under Section 379 of IPC. The petitioner also states that the first ground suffers from the vice of staleness, since the incident happened nearly one year prior to the order of detention and that no crime has been registered in respect of items 1 to 4 of the grounds of detention.

A detailed counter affidavit has been filed by the 1st respondent denying the various allegations made by the petitioner. It is stated that the Divisional Forest Officer, Wildlife Management Division, Tirupati through his report dated 28-4-2004 brought to the notice of the 1st respondent that the detenu was constantly indulging in smuggling of red sanders wood from the forests of his division and also placed the record pertaining to various cases registered against the detenu. It was also brought to the notice of the 1st respondent that the activities of the detenu caused loss to the national wealth resulting in adverse ecological balance having ramification on the health and well being of the public. On 21-6-2003, while the lorry bearing Registration No.AP 36T was proceeding towards Bakrapet, was intercepted by the forest staff at Bodevandipalli, but it was not stopped. The forest staff chased and stopped the lorry at Shiva Temple and detained its driver-R.Shankaraiah and the associate of the detenu, namely, Ankim Narasimhulu. They made confessional statements saying that the red sander logs were being transported from Kammappalli village and the forest produce belongs to the detenu and one Venkatadri Naidu. On such information, O.R.No.28/203-04 of S.V.National Park, Chamala Range was registered against the detenu. Likewise, another case was registered on 15-3-2004 against the detenu when he hid red sanders weighing 766 kgs, valued at Rs.33,700/- in the river bed. Though the forest staff identified him, the detenu ran away from the scene of offence. Similarly, on 21-3-2004 another case was registered against the detenu. The forest officers, who were watching at forest check post, Rangampet received a wireless message at about 8.30 p.m. on 20-3-2004, the anti-poaching squad party (wildlife management range) was chasing Tata Estate car bearing No.TN 37J 6300 in which red sander logs were being transported. The vehicle was seized and on interrogation, the person found under suspicious circumstances at the scene of offence stated and confessed that he came in the said vehicle as second driver along with another driver and the detenu was the prime accused in the said offence and at his instance, the forest produce was being

transported. So also, another case was registered against the detenu on 17-3-2004 when the forest officials found 19 red sanders valued at Rs.22,478/-. The forest staff found the detenu along with his accomplices running from the spot. Further, a case in Crime No.12/2003 of Yerravaripalem Police station was registered against the detenu on 24-3-2004 when the detenu along with his accomplices were trying illegally to transport the red sander logs. The detenu and his accomplices were caught hold of and 64 red sanders valued at Rs.89,056/- were seized from them. The detenu was charged for the offences under Section 379 IPC and Sections 29(4) (a)(i)(ii) and 29(2)(b) of the A.P.Forest Act and Rule 3 of the A.P.Sandalwood & Red Sanders Wood Transit Rules,1969 and was produced before the Judicial First Class Magistrate, Piler, who released him on bail. It is also stated that the cases referred to above clinchingly establish that the detenu was frequently indulging in the offences, which in turn, endangering the depletion of forest produce and thereby causing prejudicial acts affecting the public order. On noticing the serious offences committed by the detenu and their proximity, the 1st respondent found the activities as dangerous and causing much damage to the national wealth. Therefore, he satisfied that the detenu should be detained, as his presence in the public society is prejudicial to the public order, since he was a 'goonda' and as such, ordered for his detention. It was also asserted that the English version of the grounds of detention along with the Telugu translated version, were duly served on the detenu and they were a complete document. Therefore, the contention of the petitioner that incomplete document was supplied to the detenu was incorrect. Further, the contention of the petitioner that the impugned order was passed without application of mind and the detenu has not committed any offence under Section 379 IPC, which is part of Chapter XVI cannot be accepted.

Sri C. Padmanabha Reddy, learned senior counsel appearing for the petitioner, raised three-fold contention, viz.,

- i. that there is no proximity to the incidents referred to in the detention order;
- ii. that though it is alleged in the detention order that the detenu confessed the guilt, no such statements were supplied to him, which vitiates the detention order; and
- iii. that the activities alleged against the detenu do not affect the 'public order' as contemplated under Section 2(a) of the Act .

Proximity:

Learned senior counsel appearing for the petitioner contended that the latest incident occurred on 24-3-2004, which was after more than ten months of the first incident. Therefore, no proximity can be traced since no criminal case was booked against the earlier incidents. The stale incidents ought not to have been taken into consideration. It was also contended that though five incidents were referred to in the grounds of detention, no crime was registered either under Section 379 IPC or under Section 29(4) of the A.P. Forest Act against the incidents shown at items 1 to 4. In support of his contention, he relied upon the decision of a Division Bench of this Court in **MOHD.AHMED KHAN v. GOVERNMENT OF A.P. AP.**, in which it was held as under:

“25. It is well settled that even if one stale and not proximate ground is taken into consideration in arriving at the subjective satisfaction, the whole of the detention order becomes unsustainable. There is no provision in the Act in hand similar to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 where the grounds are severable. In such circumstances, it becomes difficult to discern as to which ground weighed with the detaining authority while passing the detention order.”

Whereas, the learned Advocate General appearing for the respondents contended that the various incidents noted in the detention order were committed within a short period. Therefore, the contention of the learned senior counsel for the petitioner that there was no proximity of the incidents is not tenable. In support of his contention, he relied upon a decision of the apex Court in **GORA V. STATE OF W.B.**, in which it was held as follows:

“2. The test of proximity is not a rigid or mechanical “test to be blindly applied by merely counting the number of months between the ‘offending acts’ and the order of detention. It is a subsidiary test evolved by the Court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only in so far as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future. Here in the present case, the act alleged against the petitioner was a daring act of dacoity in a village by a gang consisting of the petitioner and his associates and if this act is judged in its correct setting, grave proportions and clear implications, it would be clear that it cannot be a stray isolated act but must be the work of a habituated and hardened criminal given to commit dacoities and the District Magistrate could, therefore, reasonably arrive at a satisfaction that with a view to

preventing the petitioner from carrying on such activities it was necessary to detain him. Moreover, the affidavit in reply filed on behalf of the State Government by the Secretary in the Department of Public Relations and Youth Services, points out that in connection with the incident set out in the grounds of detention a criminal case was filed in the court of the Sub-Divisional Judicial Magistrate, Diamond Harbour on June 26, 1973 and he was arrested in connection with that case, but it appeared- during investigation that witnesses were unwilling to give evidence in open court against the petitioner and his associates and it was, therefore, felt that it was futile to proceed with the criminal case and it was decided to drop it against the petitioner. Now, if the criminal case were dropped, the petitioner would have to be released and in that even he would be free to carry on his nefarious activities. The District Magistrate, therefore, passed the order of detention on December 29, 1973. The order of detention **WAS** in fact passed in anticipation of the petitioner being released as a result of dropping of the criminal case against him. The record of the case which was produced before us by the learned Counsel appearing on behalf of the State showed that the criminal case was actually pending against the petitioner on January 3, 1974. That means that the criminal case must have been dropped and the petitioner must have been discharged sometime between January 3, 1974 and January 18, 1974, the latter being the date when he was once again arrested pursuant to the order of detention. It is, therefore, not possible to say that the District Magistrate could not have arrived at a subjective satisfaction on the basis of the incident set out in the grounds of detention, or that the subjective satisfaction reached by him was sham or unreal.

It is stated that the petitioner involved in commission of offences habitually, the first incident occurred on 20-6-2003 and the rest of the incidents were all happened within a gap ten days i.e. in between 15-3-2004 and 24-3-2004. Thus, there was a gap of about 10 months from the first incident and the second set of four incidents. Though it is sought to be explained that it would take some time for registering the cases, as the procedure for launching prosecution for the offences under the A.P.Forest Act is different, admittedly, no criminal case was registered against the detenu. The only criminal case registered was with regard to the latest incident on 24-3-2004 and the detenu was released on bail. If that is so, what prevented the authorities from launching prosecution for the earlier incidents is not known and there is no explanation except saying that there were some procedural wrangles involved and, therefore, the FIRs were not issued against the earlier four incidents, which cannot be believed. The decision in **GORA's** case (2 supra) has no application to the facts of this case. There, it was a case where the act alleged against the detenu was a daring act of dacoity in a village by a gang consisting of the detenu and his associates and if that act was judged in its correct setting, grave proportions and clear implications, it cannot be a stray isolated act, but must be the work of a habituated and hardened criminal given to commit dacoities and the District Magistrate could, therefore, reasonably arrived at a satisfaction with a view to prevent the detenu from carrying on such activities, by invoking the provisions of the Act. Whereas, the instant case is not one such case. In the earlier four incidents, there was no criminal case booked against the detenu, but in the last case, criminal prosecution was launched and the detenu was enlarged on bail. Therefore, the

contention of the learned Advocate General that there was proximity in the commission of offences cannot be accepted and a solitary incident could also be taken into consideration in a given case also does not arise.

Non-supply of alleged confessional statement

Learned senior counsel appearing for the petitioner submitted that the preamble of the grounds of detention discloses that the detenu had confessed the offences. Copy of such statement was not supplied to the detenu, who was prevented from making effective representation. Non-supply of such a vital document relied upon in the grounds of detention is fatal. In support of his contention, the learned senior counsel relied upon the decision of the apex Court in **POWANAMMAL V. STATE OF T.N.**, in which it was observed as under:

“8. The law relating to preventive detention has been crystallized and the principles are well-nigh settled. The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language, which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. (See *Hadibandhu Das v. District Magistrate, Cuttack*¹.)

9. However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.”

Learned Advocate General contended that there is no necessity to supply the confessional statement, since the detenu himself confessed his guilt. The vagueness in the preamble cannot be made a ground of attack. In support of his contention, he has drawn our attention to the Judgment of the apex Court in **DHANANJOY DAS V. D.M.**,

“13. The Grounds of Detention read as a whole leave no room for doubt that paragraph (1) of the Grounds of Detention was only by way of introduction or as a preamble. In substance, it only indicates the modus operandi adopted by the various organizations to the current agitation on foreigners issue in Assam. The second and third paragraphs of the Grounds of Detention allege a specific part played by the appellant in that agitation. On a perusal of Grounds of Detention as a whole we are satisfied that the view taken by the High Court that the first paragraph of the Grounds of Detention was only a preamble, prelude, or introductory para is correct. If this be the position then the vagueness in the first paragraph cannot be made a ground of attack on the impugned order.”

Learned Advocate General placed the records before this Court, from which we find that the alleged confessional statement was not really a confessional statement made by the detenu in a manner known to law. It was, in fact, a panchanama recorded at the time of seizure of the logs. It was not even signed by the detenu. The question of supplying the alleged confessional statement to the detenu does not arise, since, there was no confessional statement made available. The detaining authority ought not to have relied upon such irrelevant material in support of its subjective satisfaction.

Habitual offender and public order

Learned senior counsel for the petitioner contended that the activities alleged against the detenu do not affect the 'public order' as contemplated under Section 2(a) of the Act nor he can be called to be a 'goonda' as per Section 2(g) of the Act. The provisions of Section 2(a) of the Act can be invoked only when the public order is disturbed by grave or widespread danger to the public at large. In this regard, he had drawn our attention to Sections 2(a) and 2(g) of the Act and also relied upon the decisions in **DARPAN KUMAR SHARMA v. STATE OF T.N.** wherein it was held as under:

“5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of a knife a sum of Rs 1000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of “goonda” the acts prejudicial to public order are “*when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order*” [Section 2(a)(iii)]. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention.

6. In the present case, the three alleged incidents to which the Commissioner of Police has referred to are thefts arising under Section 379 IPC and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place, one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the

content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents.”

He also relied upon a recent decision of this very Bench in **C.ANITA v. COMMISSIONER OF POLICE AND ADDITIONAL DISTRICT MAGISTRATE, HYDERABAD** in which it was held as under:

“In this regard, we have also looked into the copy of the rowdy sheet furnished by the respondents, since the learned Government Pleader submitted that these are all the material furnished to the detenu in support of his detention. Of course, none of the cases, excepting the said two incidents, mentioned in the rowdy sheet form part of the grounds of detention. A close examination of the rowdy sheet shows that detenu seems to have involved in some petty cases here and there and in all those cases either he was discharged or acquitted or were closed under Section 116(6) of the Code of Criminal Procedure. Such a material neither can be relied upon nor can be said to be any way relevant to hold that the same is acting in a manner prejudicial to the maintenance of public order. The incidents referred to in the order of detention relate to the years 2002 and 2003. They may be proximate to the detention order dated 15-7-2003. May be, the detenu can be called to be a goonda or a land grabber, but it is the grounds of detention, which should satisfy the criteria that the activities of the detenu were resulting in prejudice to the maintenance of public order. “

The learned senior counsel also drawn our attention to the Judgment of a Division Bench of this Court in **MOHD.AHMED KHAN**’s case (1 supra) wherein it was held:

“32. In order to pass an order of detention under the Act against any person, the detaining authority must be satisfied that such person is a bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land grabber. The detaining authority must also be further satisfied that an order directing such person be detained is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order. A plain reading of Section 3(1) of the Act would make it clear that power to make an order detaining a person would be available only if the detaining authority, is satisfied that the detenu is one of the types of persons mentioned in Section 3(1) of the Act and in order to prevent him from acting in any manner prejudicial to the maintenance of public order. Obviously, the detaining authority cannot make an order directing the detention of any bootlegger, dacoit, drug offender, goondas, immoral traffic offender or land grabber unless the detaining authority comes to a conclusion that such detention is necessary in order to prevent such person from making in any manner prejudicial to the maintenance of public order. Mere fact that one is a goonda or land-grabber would not enough to detain him under the provisions of the Act unless the detaining authority is satisfied that the activities of such person are resulting in prejudice to the maintenance of public order.”

Learned Advocate General drawn our attention to page-60 of the material papers filed by him, which is a Mahajar (panchanama) and submitted that the said Mahajar recorded at the time of seizure of forest produce, is a confessional statement made by the detenu. In support of his contention, he relied upon the decision in **ANAKALA MADDILETI v. GOVT. OF A.P.** in which it was held as

under:

“34.....The activities of detenus viz., felling of forest trees, smuggling them and in that process assaulting the forest officials and preventing them from discharging their lawful duties are nothing but disturbing the even tempo of public order. Cutting the forest trees illegally on a large scale would ultimately lead to dwindling of the forest area and result in deforestation which is now the concern of the society which of late has realized the importance of maintaining ecological balance. The process of deforestation would invariably lead to ecological imbalance which affects the community as a whole in the long run. As indicated, when the community's wealth is affected by the activities of these detenus and their supporters, such an act could definitely be held to be affecting public order. Therefore, we are convinced to hold that the detenus, despite cases being registered against them on earlier occasions, have persistently and repeatedly continued in the activity of timber smuggling from the forest areas and also assaulted the forest officials and are habitual offenders. Therefore, they are rightly been termed as 'goondas' within the meaning of Clause (g) of Section 2 of Act No.1 of 1986 by the detaining authorities.”

He has also drawn attention of this Court to the decision of the apex Court in ***AMANULLA KHAN KUDEATALLA KHAN PATHAN V. STATE OF GUJARAT*** in which it was held as under:

“4. Mr Anil Kumar Nauriya, the learned counsel appearing for the detenu in this Court reiterated the same contention namely that a single incident in which the detenu is alleged to be involved and for which the criminal case had been registered will not be sufficient to hold the detenu to be a “dangerous person” under Section 2(c) of the Act inasmuch as the expression “dangerous person” has been defined to be a person who either by himself or as a member or leader of a gang, during a period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. In other words according to the learned counsel unless the activities of the detenu considered by the detaining authority indicate that he has either habitually committed or attempted to commit or abet the commission of offence, he cannot be held to be a “dangerous person” under Section 2(c) of the Act. The expression “habitually” would obviously mean repeatedly or persistently. It supplies (*sic* implies) the threat of continuity of the activities and, therefore, as urged by the learned counsel for the petitioner an isolated act would not justify an inference of habitual commission of this activity. In this view of the matter the question that requires adjudication is whether the satisfaction of the detaining authority in the present case is based upon the isolated incident for which the criminal case was registered or there are incidents more than one which indicate a repeated and persistent activity of the detenu. If the grounds of detention are examined from the aforesaid standpoint, it is crystal clear that apart from the criminal case which had been registered against the detenu for having formed a gang and hatched a conspiracy to extort money from the innocent citizens by threatening them and keeping them under constant fear of death, the two witnesses examined by the detaining authority narrated the incidents that happened on 26-7-1998 and 2-8-1998 in which the detenu was involved and on the first occasion a sum of Rs.1 lakh was demanded and when the person concerned refused, he was dragged and assaulted and on the second occasion a sum of Rs.50 thousand was demanded and on refusal, the persons were dragged on the road and were beaten on the public road. It is not the grievance of the detenu that the statements of the aforesaid two witnesses had not been appended to the grounds of detention or had not been mentioned in the grounds of detention. In fact, the grounds of detention clearly mention the aforesaid state of affairs and there is no bar for taking these incidents into consideration for the satisfaction of the detaining authority that whether the person is a “dangerous person” within the ambit of Section 2(c) of the Act. We, therefore, fail to appreciate the first contention raised by the learned counsel for the petitioner that the satisfaction of the detaining authority that the detenu is a “dangerous person” is based upon the solitary incidence in respect of which a criminal case has already been registered. In our considered opinion the detaining authority has considered the three different incidents that happened on three different dates and not a solitary incidence and, therefore, the test of repeatedness or continuity of the activity is fully satisfied and the satisfaction of the detaining authority holding the detenu to be a “dangerous person” is not vitiated in any manner. The contention of the learned counsel for the petitioner therefore stands rejected.

5. Mr Anil Kumar, the learned counsel then urged that even if the activities of the detenu were sufficient to hold him to be a “dangerous person” yet an order of detention can be passed under the Gujarat Act only with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order. By virtue of provisions contained in sub-section (4) of Section 3 of the Act a person shall be deemed to be “acting in any manner prejudicial to the maintenance of public order” when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Thus maintenance of public order is sine qua non for passing an order of detention under Section 3 of the Gujarat Act. But in the case in hand the alleged activities of the detenu are all in relation to violation of the normal criminal law and it has got no connection with the maintenance of public order and, therefore, the order of detention is vitiated. We are unable to appreciate this contention of the learned counsel for the detenu inasmuch as even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not. In *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commr. of Police*¹ it has been held by this Court that in order to bring the activities of a person within the expression of “acting in any manner prejudicial to the maintenance of public order”, the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to breach of “public order”. Applying the ratio of the aforesaid decision to the facts of the present case we find that the activities of the detenu by trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money to drag them and torture them on public road undoubtedly affected the even tempo of life of the society and, therefore such activities cannot be said to be a mere disturbance of law and order. In our considered opinion the activities of the detenu are such that the detaining authority was satisfied that such activities amount to disturbance of public order and to prevent such disturbance the order of detention was passed. We, therefore, do not find any substance in the second contention of the learned counsel for the detenu. Mr Anil Kumar then urged that the Advisory Board having not indicated that the detenu is to be detained for more than three months, has failed to discharge its constitutional obligation and there has been an infringement of Article 22(5) of the Constitution and in support of the same reliance has been placed on the decision of this Court in *A.K. Gopalan v. State of Madras*² and the decision of this Court in *John Martin v. State of W.B.*³ At the outset it may be stated that the detenu had not made any such grievance in the writ petition that had been filed in the Gujarat High Court. That apart, the opinion of the Advisory Board to the State Government, rejecting the representation of the detenu and expressing its opinion with regard to the existence of sufficient cause for the detention of the detenu is not a part of the record and what is pressed into service by the learned counsel in support of his argument is the mere communication from the Section Officer of the Home Department dated 27-8-1998, intimating the factum of the rejection of representation by the Advisory Board. Section 11 of the Act is the procedure for making reference to the Advisory Board and Section 12 provides the duties and obligation of the Advisory Board on the basis of materials placed before it. Under sub-section (2) of Section 12 it is the requirement of law that the report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the detenu and this opinion of the Advisory Board has been furnished in the present case. We really fail to understand how a contention could be raised that the Advisory Board has failed to discharge its obligation and how the court would be entitled to examine the same without even the copy of the report of the Advisory Board being formed a part of the records of the present proceedings. In view of the counter-affidavit filed in the present case that all the provisions have been duly complied with and in the absence of any material to support the arguments advanced by the learned counsel, we do not find any force in the contention raised alleging any infraction of provision of law in the opinion given by the Advisory Board and the said Board in rejecting the representation of the detenu. This contention therefore, is devoid of force.

6. The next contention raised by the learned counsel for the detenu is that even though the representation was made to the Advisory Board yet the detaining authority was also duty-bound to consider the same as the detaining authority also could have revoked the order of detention and non-consideration of the representation by the detaining authority constitutes an infraction of Article 22(5) of the Constitution and in support of this contention reliance has been placed on the decision of this Court in *Kamleshkumar Ishwardas Patel v. Union of India*⁴. This contention to us appears to be based upon a misconception of the relevant provisions of the Act. Admittedly, the representation in question was made to the Advisory Board and not to the detaining authority. If a representation is made by the detenu to the authorised officer for revoking or modifying the detention order then it would be certainly his constitutional obligation to consider the same and pass appropriate orders thereon and non-consideration would tantamount to violation of constitutional rights to a detenu under Article 22(5). But if a representation is made to a specified authority and that specified authority in the given case is the State Government and the Advisory Board considers the same and disposes of it, then at that stage the question of the detaining authority considering the said representation even though not addressed to it does not arise. If the Gujarat Prevention of Anti-Social Activities Act, 1985 is analysed it would appear that the legislature has circumscribed the powers of the detaining authority by providing that an order of detention would lapse after 12 days from the passing of the order unless the State Government has within the said period endorsed and ratified the same. Therefore within the aforesaid period of 12 days, the detaining authority has the power of revocation which it can exercise before the State Government ratifies the same. But once the State Government approves the order of detention then on the same set of circumstances the detaining authority cannot revoke an order of detention. Though if subsequent circumstances change, the detaining authority may have the power of revocation in view of the provisions of the General Clauses Act. But when no representation is made to the detaining authority after the order of detention passed by it is approved by the State Government indicating new set of circumstances requiring the detaining authority to consider its representation, and on the other hand the representation is addressed to the Advisory Board, we see no requirement of law for that representation being also to be disposed of by the detaining authority and such non-disposal would amount to violation of the constitutional rights of the detenu under Article 22(5) of the Constitution. This contention of the learned counsel for the petitioner is devoid of force. That apart, the detenu never raised this question before the High Court making any such allegation. Another ground was raised by the learned counsel in this Court to the effect that the grounds of detention no doubt indicated that the activities are such that it cannot be dealt with by the Bombay Police Act but no reasons have been given and therefore, it is mere ipse dixit of the detaining authority and on that score the order of detention is vitiated. We are also unable to accept this contention. The satisfaction of the detaining authority on consideration of the activities of the detenu and on forming an opinion that the activities are such which affect the maintenance of public order and as such it is necessary to put the detenu under detention cannot be interfered with by the court of law on mere assertion of the detenu. It is not required to be stated in the grounds of detention as to why the detaining authority has formed the opinion that the activities in question cannot be adequately dealt with under the provisions of the Bombay Police Act. We see no infirmity with the order of detention or with the satisfaction arrived at by the detaining authority, requiring the detenu to be detained under the Act on that score. We, therefore, have no hesitation to reject the said submission of the learned counsel for the petitioner. In the aforesaid premises all the contentions raised having failed, the criminal appeal by grant of special leave arising out of the judgment of the Gujarat High Court as well as the writ petition filed under Article 32 of the Constitution, fail and are dismissed.

The Mahajar shown at page-60 of the material papers is only a 'panchanama' conducted in the presence of panchas as to recovery of the seized goods etc. from the detenu. The panchanama and its contents can never be said to be a confessional statement made by the detenu. Therefore, the contention of the respondents that the detenu confessed the guilt cannot be accepted. The contention that the detenu was a habitual offender and a 'goonda' also cannot be accepted.

Further, assuming that he was a 'goonda', the ingredients of Section 2(a) and the Explanation thereto were not satisfied. The detenu cannot also be called a 'goonda' being himself or as a member or leader of the gang habitually committing or attempted to commit the offences punishable under Chapter XVI, XVII or XXII of IPC. The Act contemplates preventive detention of a person whose activities are dangerous and prejudicial to the maintenance of public order and in that direction, the special law was made. From the activities attributed to the detenu, it is seen that there is no widespread danger or harm caused to the public at large or a section of the people. There was absolutely no ground made out as to the subjective satisfaction of the detaining authority that on consideration of the activities of the detenu and on forming an opinion that the activities are such which affect the maintenance of public order, it was necessary to put the detenu in detention. In the instant case, neither there was any confessional statement available nor the Mahajar (panchanama) can be said to be an input for the subjective satisfaction of the detaining authority. The decision relied upon by the learned Advocate General in **AMANULLA KHAN's** case (8 supra) has no relevance to the facts of this case. In the said case, it was observed that innocent persons were threatened and kept in constant fear. The two witnesses examined by the detaining authority narrated the incident that happened on particular dates in which the detenu was involved. On the first occasion, a sum of Rs.1 lakh was demanded and when the person concerned refused, he was dragged and assaulted and on the second occasion, a sum of Rs.50 thousand was demanded and on refusal, the persons were dragged on the road and were beaten on the public road. It was further noticed that as those incidents were already formed part of grounds of detention, there was no bar for taking those incidents into consideration for the subjective satisfaction of the detaining authority that whether the person was a 'dangerous person' or not. In this case, there was no such material placed before the detaining authority to come to the conclusion that the detenu was a dangerous person. We are of the opinion that absolutely there are no grounds to detain the father of the petitioner (detenu) by invoking the provision of Section 3(2) of the Act.

For all the above reasons, the writ petition is allowed. The impugned order dated 8-5-2004 passed by the 1st respondent in his Proceedings ROC.C2/2765/2004 is quashed. The detenu – Nandam Reddy Ramanarayana Reddy - who is now detained in the Central Prison, Cherlapalli, Ranga Reddy

district, shall be released forthwith, unless his presence is required in connection with any other offence.

W.P.No.10826 of 2004

This Writ Petition is filed seeking a Writ of Habeas Corpus to direct the respondents to produce the husband of the petitioner – Pathipati Venkatadri Naidu (detenu), who is now detained in Central Prison, Cherlapalli, Ranga Reddy district by invoking the provisions of sub-section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (hereinafter referred to as 'the Act'), before the Court and release him forthwith by declaring detention order dated 8-5-2004 passed by the 1st respondent in his Proceedings ROC.C2/2766/2004 as illegal and void.

In this case also, almost similar arguments as were advanced by either side in the above case, were advanced. Apart from that, another ground was taken by the learned senior counsel appearing for the petitioner that in ground Nos.1 and 5 of the Grounds of Detention, though the offences under the provisions of the A.P. Forest Act were alleged, no offence under Section 379 of the Indian Penal Code was alleged to attract the definition of 'goonda' under Section 2(g) of the Act. Therefore, ground Nos.1 and 5 have no relevance for the detention of the detenu. Even if one of the grounds is irrelevant, the entire detention order must be held to be bad in law. In support of his contention, the learned senior counsel relied upon a decision in **MOHD.AHMED KHAN's** case (1 supra) in which it was held as under:

“25. It is well settled that even if one stale and not proximate ground is taken into consideration in arriving at the subjective satisfaction, the whole of the detention order becomes unsustainable. There is no provision in the Act in hand similar to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 where the grounds are severable. In such circumstances, it becomes difficult to discern as to which ground weighed with the detaining authority while passing the detention order.”

Whereas, learned Advocate General appearing for the respondents argued that, even if one of the grounds, formed part of decision making process, is irrelevant, that itself cannot vitiate the entire detention order. Further, the confessional statement was made available and the nature of facts relating to previous conviction etc.,

would show that the detenu was a habitual offender and acted in the manner prejudicial to the maintenance of public order. In this regard, he relied upon the decision of the Supreme Court in **K.ARUNA KUMARI v. GOVT.OF A.P.** and drawn attention of this Court to paragraph-11 thereof, which reads as under:

“11.....In the instant case the ground of detention is only *one*, viz. the detenu was acting prejudicial to the maintenance of supplies of commodity, that is, levy cement, essential to the community by diverting it to the open market. The grounds of detention served along with the order are nothing but a narration of facts. The question whether the detenu was acting in a manner prejudicial to the maintenance of supplies essential to the life of the community is a matter of inference to be drawn from facts. The learned Advocate General was fair enough to accept before us that the applications for grant of anticipatory bail moved before the criminal court were not placed before the detaining authority. Even so, it could not be said that there was no material upon which the subjective satisfaction of the detaining authority could be based. It appears from the grounds, i.e., the facts set out that the detenu had made a statement admitting that he had diverted 600 bags of levy cement issued to him for use in the masonry ballast wall along the railway track and therefore the District Magistrate was justified in coming to the conclusion that he (the detenu) was acting in a manner prejudicial to the maintenance of supplies of the commodity essential to the community.....”

As noticed in the earlier case, this is also a case where the purported confessional statement was nothing but a ‘panchanama’ recorded at the time of seizure of red sander logs. Neither it contains the signature of the detenu nor it was a written statement as contended by the learned Advocate General. Further, even one stale and irrelevant ground was taken into consideration in arriving at the subjective satisfaction, the whole detention order becomes unsustainable. Therefore, the same could not have formed part of decision making process before the detaining authority. Further, the two grounds i.e. Ground Nos.1 and 5 do not fall under Chapter XVI, XVII and XXII of IPC and do not satisfy the requirement of Section 2(g) of the Act. On this ground also, the impugned detention order is liable to be set aside.

In the result, the writ petition is allowed. The impugned order dated 8-5-2004 passed by the 1st respondent in his Proceedings ROC.C2/2766/2004 is quashed. The detenu – Pathipati Venkatadri Naidu, S/o Subbaiah Naidu, who is now detained in the Central Prison, Cherlapalli, Ranga Reddy district, shall be released forthwith, unless his presence is required in connection with any other offence.

(DEVINDER GUPTA, CJ)

3rd August, 2004

(C.V. RAMULU, J)

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the third day of August Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Collector and District Magistrate, Chittoor.
- 2 The Chief Secretary, Government of A.P., Secretariat Hyderabad.
- 3 The Superintendent of Central Prison, Cherlapalli (By Special Messenger).
4. 2 CCs to Advocate General (O.U.T.)